

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

|                                    |   |                                  |
|------------------------------------|---|----------------------------------|
| AMGEN, INC.,                       | ) |                                  |
|                                    | ) |                                  |
| Plaintiff,                         | ) |                                  |
|                                    | ) |                                  |
| v.                                 | ) | Civil Action No. 05 CV 12237 WGY |
|                                    | ) |                                  |
| F. HOFFMANN-LAROCHE LTD.,          | ) |                                  |
| a Swiss Company, ROCHE DIAGNOSTICS | ) |                                  |
| GMBH, a German Company, and        | ) |                                  |
| HOFFMANN LAROCHE INC., a New       | ) |                                  |
| Jersey Corporation,                | ) |                                  |
|                                    | ) |                                  |
| Defendants.                        | ) |                                  |

**AMGEN INC.'S MOTION TO STREAMLINE AND EXPEDITE THE LIVE  
TESTIMONY OF DR. THOMAS STRICKLAND**

## **I. Introduction**

Amgen moves this Court, pursuant to Fed. R. Evid. 902(11) and 803(6), to accept the declaration of Dr. Thomas Strickland<sup>1</sup> to authenticate and qualify Dr. Strickland's poster presentation (Exhibit CEW)<sup>2</sup> and Dr. Strickland's laboratory notebooks (Trial Exhibits CBP, CFA, CBQ, CDA, and CFC) as Amgen business records.<sup>3</sup>

Although Dr. Strickland will testify live at trial, these documents are authentic Amgen business records and as such can be admitted into evidence with the attached declaration of Dr. Strickland. *See* 5 Weinstein's Federal Evidence, § 803.08[8][b], at 803-82 ("Instead of providing live testimony from a custodian or other qualified witness, the proponent of business records may choose to present the foundation by a certification that complies with Rule 902(11) . . ."); *see also United States v. Lauersen*, 348 F.3d 329, 342 (2d Cir. 2003) (same). In support of this request, Amgen proffers the Declaration of Dr. Strickland, the author of the poster and the laboratory notebooks.<sup>4</sup>

## **II. Argument**

Dr. Strickland has been employed as a Principal Scientist by Amgen for over 19 years. *See* Strickland Decl. at ¶ 1. As set forth in Dr. Strickland's Declaration, he recorded the

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<sup>1</sup> Amgen intends to call Dr. Strickland in its validity phase case. Accordingly, Amgen is available for hearing with respect to this motion this afternoon if the Court believes a hearing would be assist it in deciding the matter.

<sup>2</sup> A paper copy of Exhibits CBP, CFA, CBQ, CDA, CFC and CEW will be filed with the Court manually on Monday, October 1, 2007.

<sup>3</sup> Amgen also offers the original laboratory notebooks into evidence as the best evidence (Fed. R. Evid. 1002), and to obviate any objection based on the completeness of the offered exhibits.

<sup>4</sup> The Declaration of Dr. Strickland is attached hereto as Exhibit A to the Declaration of Patricia R. Rich filed herewith.

scientific experiments he performed in this laboratory notebook and created poster presentations in connection with scientific meetings as part of his regular work with Amgen. *Id.* at ¶¶ 4-8 and 10. Dr. Strickland attests that it is Amgen's policy to maintain presentation slides and posters reporting scientific research for a period of twenty-five years from the date the slides or posters are presented at the scientific meeting. *Id.* at ¶ 9. Dr. Strickland also attests that it is Amgen's policy to maintain such laboratory notebooks in the office files of the recording research scientist until such time as the recording is complete. *Id.* at ¶ 3. At such time, the record is transferred to a central repository administered by the Amgen Libraries Department where it is maintained thereafter. *Id.*

Dr. Strickland identified Exhibit CEW as a true and correct copy of a poster presentation that he prepared in collaboration with Dr. Gary Rogers, another Amgen scientist. *Id.* at ¶ 9. Dr. Strickland prepared the poster presentation represented by Exhibit CEW in connection with a scientific meeting that took place in March of 1992 in Park City, Utah and that the poster presentation was created at or near the time of the occurrence of the matters reflected in the poster presentation. *Id.* Dr. Strickland also attests that he prepared poster presentations such as shown in Exhibit CEW as part of his regular job responsibilities as a Research Scientist at Amgen. *Id.*

Moreover, Dr. Strickland identified Exhibits CBP, CFA, CBQ, CDA, and CFC as true and correct copies of his laboratory notebooks that contain a record of the scientific experiments he performed during specific time periods while employed by Amgen. *Id.* at ¶¶ 4-8. Dr. Strickland attests that, in every instance, these notebooks were created at or near the time of the occurrence of the matters reflected in the respective notebook and that such notebooks were maintained in the ordinary course of Amgen's regularly conducted business activity. *Id.* Dr.

Strickland further attests that he regularly created the notebooks represented in Exhibits CBP, CFA, CBQ, CDA, and CFC as part of his regular work at Amgen. *Id.*

Although Dr. Strickland will testify live at trial, Amgen respectfully requests the admission of Exhibits CBP, CFA, CBQ, CDA, CFC, and CEW, pursuant to Fed. R. Evid. 902(11) and 803(6), as Amgen business records through the declaration of Dr. Strickland prior to Dr. Strickland taking the stand.

Dated: October 1, 2007

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of electronic filing and paper copies will be sent to those indicated as non-registered participants on October 1, 2007.

/s/ Patricia R. Rich  
Patricia R. Rich

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1**

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by this motion and no agreement was reached.

/s/ Patricia R. Rich  
Patricia R. Rich